



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/148925

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 22, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 21, 2013, at Racine, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely as to both a notice of tax intercept tax issued to collect an overissuance of FoodShare benefits as well as the underlying overpayment and whether Petitioner is liable for the overpayments for which the agency seeks recovery.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Dean Landvatter

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. A Notification of FS Overissuance dated September 18, 2012 was sent to Petitioner at [REDACTED] [REDACTED] [REDACTED] [REDACTED] Wisconsin. It informed Petitioner that he had been overissuance FoodShare in the amount of \$8237.00 during the period from June 1, 2010 through May 31, 2011. This is claim # [REDACTED].

3. A second Notification of FS Overissuance also dated September 18, 2012 was sent to Petitioner at [REDACTED], Wisconsin. It informed Petitioner that he had been overissued FoodShare in the amount of \$3140.00 during the period from June 1, 2011 through October 31, 2011. This is claim # [REDACTED].
4. A tax intercept notice dated February 15, 2013 was sent to Petitioner and informed Petitioner that his tax refunds were subject to intercept to repay an \$11,344.00 overpayment of FoodShare benefits (Claim #s [REDACTED] and [REDACTED]). That was sent to Petitioner at [REDACTED]. It contains appeal instructions and the appeal deadline was noted to be 30 days from the date of the notice.
5. This appeal was filed on April 22, 2013.
6. The [REDACTED] address is the address of Petitioner's mother. She has also been notified of the overissuance alleged here. The overpayment occurred as Petitioner's mother failed to report unearned income.
7. The reason for effort to collect this overpayment from Petitioner is that his mother was claiming him as a member of the household.
8. Petitioner moved out of his mother's home in late 2009 and has not lived there since.
9. Petitioner's birthday is [REDACTED] 21, 1992.

### DISCUSSION

This decision begins with a description of the regulatory framework under which the agency seeks to recover this FoodShare overissuance.

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2). All adult members of the household are liable for an overpayment:

All adult [a person who is 18 years old or older] or emancipated minor [A married, widowed or divorced person who is at least 16 years old, a minor who has given birth, a minor emancipated by court order, a minor emancipated by parental consent or a minor living on his or her own who is not supported by parents] food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

*FoodShare Eligibility Handbook, Appendix 7.3.1.2; also see 7 C.F.R. §273.18(a)(4).*

Once an overpayment is established, *Wis. Stat. § 49.85* provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id. at § 49.85(3)*.

The hearing right is described in *Wis. Stat. § 49.85(4)(b)* but is limited:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing. (Emphasis added).

The time limit for filing an appeal of a tax intercept notice is 30 days. §49.85(3)(a)2, Stats.

As for the underlying overpayment, the Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. See *FoodShare Wisconsin Handbook (FSH)*, §6.4.1 and 7 CFR, §273.15(g).

The first question here is whether or not Petitioner's appeal is timely as to the underlying overpayment as well as the tax intercept. The second question is whether Petitioner was living in the home of his mother during the time period involved here and thus liable for this overpayment. The answer to both questions is resolved by determining where Petitioner was living from the time this overpayment began through the issuance of the overpayment notices and the tax intercept notice.

Petitioner testified that he moved from his mother's home in late 2009 or early 2010; just as he was turning age 18. At some point a tax intercept notice was mailed to him at the above address. It is not clear when or if forwarded by a family member or if the Public Assistance Collection Unit found the address and mailed the notice to him. He indicated that on his 2011 tax return he used the above, St. Clair address.

The best available evidence here came from the testimony of the person (KD) with whom Petitioner does reside. She is the mother of Petitioner's girlfriend. She testified, quite credibly, that Petitioner has lived in her home with her family since late 2009 or very early 2010. Petitioner does not have the closest of relationships with his mother. While this is an unusual situation, I, again, found the testimony of KD to be credible. She indicated that Petitioner is like a son to her and her husband; they have acted as parents to him over the past three years. He moved into their home at about the time he turned age 18.

Obviously Petitioner's mother was claiming that he was part of her household but the testimony convinces me otherwise. The best evidence indicates that Petitioner had moved from the home of the mother before this overissuance occurred. I am finding his appeal of both the tax intercept as well as the underlying overpayment to be timely as notices were not sent to his address and do not find Petitioner to be liable for the overpayment to his mother because he was not in her household during the time period of this overissuance.

### **CONCLUSIONS OF LAW**

1. That Petitioner's appeal is timely as Petitioner was not living at the address to which the overpayment and tax intercept notices were sent.
2. That Petitioner is not liable for the FoodShare overpayment represented by claim #s [REDACTED] and [REDACTED] because he was not living in the home of his mother during the time period involved.

**THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the agency as well as the public assistance collection unit with instructions to take the administrative steps necessary to reverse Petitioner's liability for claim #s [REDACTED] and [REDACTED]. This must be done within 10 days of the date of this decision. Any funds

taken from Petitioner to recover the overissuances involved here must be returned to Petitioner. This process must be initiated within 10 days of the decision.

That this decision does not in any way reverse the underlying overpayment as to Petitioner's mother or any other liable party.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

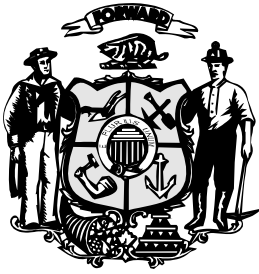
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 20th day of June, 2013

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoeft, Acting Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 20, 2013.

Racine County Department of Human Services  
Division of Health Care Access and Accountability